

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Shamrock Foods Company

(b) County of Residence of First Listed Plaintiff Phoenix

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Epstein Becker & Green, P.C., 1227 25th Street, N.W., Suite 700, Washington, D.C. 20037-1156 (Phone 202-861-0900)

DEFENDANTS

Jeffrey Gast and Sysco Food Services of Arizona, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Raymond Deeny, Esq., Sherman & Howard, LLC, 90 South Cascade Avenue, Suite 1500, Colorado Springs, CO 80903

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury		<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sec. 1331

VI. CAUSE OF ACTION

Brief description of cause:
TRO & Preliminary Injunction for violation of Computer Fraud & Abuse Act, 18 U.S.C. sec. 1030(g)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/3/08

SIGNATURE OF ATTORNEY OF RECORD

Karen M. Marcell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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11 Lead Counsel for Plaintiff

12

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15

16 SHAMROCK FOODS COMPANY, CASE NO.

17 Plaintiff,

18 v.

19 JEFF GAST, an Arizona resident, AND
20 SYSCO FOOD SERVICES OF
ARIZONA, INC., an Arizona
corporation,

22 Defendants.

23

24 **VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

25 Plaintiff, Shamrock Foods Company ("Shamrock"), submits the following

26 Verified Complaint and states:

27

28 **NATURE OF THE CASE**

1. This is an action for injunctive relief, monetary damages and other

remedies arising out of the wrongful acts of Jeff Gast (“Gast”) and Sysco Food Services of Arizona, Inc. (“Sysco”). Gast is the former Regional Sales Manager of the Southern Region of Arizona for Shamrock and now works for Sysco.

2. Sysco and Gast misappropriated Shamrock’s trade secrets, confidential and proprietary information, converted Shamrock’s property, tortiously interfered with Shamrock’s contractual relationships, violated the Computer Fraud and Abuse Act and through these and other improper actions caused substantial and irreparable harm to Shamrock. On information and belief, the actions taken by Gast, on his own behalf and as an agent of Sysco, include the following:

- Gast accessed Shamrock’s secure computer network and electronically transmitted to his own personal e-mail account Shamrock confidential and proprietary data in days immediately preceding his abrupt and voluntary resignation from Shamrock.
- After he left Shamrock’s employ and while employed by Sysco, Gast accessed, used and disclosed Shamrock’s confidential and proprietary data to gain an unfair competitive advantage over Shamrock.
- Gast disclosed the confidential and proprietary information to Sysco, a direct competitor of Shamrock’s, as well as to customers and potential customers of Shamrock, all to Shamrock’s detriment.

- Gast, while an employee of Shamrock and immediately following his resignation, solicited associates at Shamrock to join him and work at Sysco.

The actions taken by Sysco directly include, upon information and belief, encouraging Gast to breach his Confidentiality Agreement with Shamrock while he was still a Shamrock employee, to assist Sysco in obtaining and enticing Shamrock's customers and potential customers away from Shamrock and to utilize the confidential and proprietary information wrongfully accessed and retained by Gast to tortiously interfere with Shamrock's customers and prospective customers.

PARTIES AND JURISDICTION

3. Shamrock is an Arizona corporation with its principal place of business in Phoenix, Arizona.

4. On information and belief, Sysco is an Arizona corporation with its principal place of business in Tolleson, Arizona.

5. On information and belief, Gast is an individual who resides in Glendale, Arizona. The acts that gave rise to this action were taken by Gast, on his own behalf and as an agent of Sysco, in Phoenix and Glendale, Arizona.

6. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1337(a) because this Verified Complaint presents a federal question.

7. Venue is appropriate under 28 U.S.C. § 1391(b).

FACTS

8. Shamrock is a family owned food distribution business which provides food, produce, foodservice equipment and supplies to its customers throughout Arizona and the surrounding states.

9. Shamrock has many customers throughout Arizona and the Southwest.

10. Shamrock's competitive success depends on a number of different kinds of confidential information with respect to its products and customers including rates, customer lists, and pricing and marketing strategies. Shamrock expends and has expended a significant amount of effort and resources to develop and maintain the confidentiality of these different types of information.

11. Shamrock's proposals to customers, its customer lists, sales histories, pricing, proposal matrixes, and bonus and commission rates are highly confidential and proprietary. Shamrock does not disclose publicly its customer lists, commission and bonus rates, pricing or marketing strategies, or any of the confidential information contained therein.

12. Access to Shamrock's customer lists, histories, commission and bonus rates, and pricing and marketing strategies is limited to top management and other employees on a "need to know" basis.

13. Shamrock's rates, customer lists, pricing and marketing strategies.

1
2 sales histories, bonus and commission rates and other confidential and proprietary
3 information are kept on a secure server on its computer system. Access to
4 Shamrock's confidential and proprietary information is password protected.
5

6 14. The information to which Gast had access by virtue of his position as
7 Regional Sales Manager included company names, contact names, phone numbers,
8 as well as more particularized business information relating to the specific
9 customer's needs, sales and purchase history.
10

11 15. Shamrock requires its top sales managers, as a condition of working at
12 Shamrock, to enter into a written Company Confidentiality Agreement that
13 precludes employees from engaging in certain competitive activities with respect
14 to Shamrock, including retaining or disclosing confidential and proprietary
15 information, during their employment and for a period of 24 months after their
16 employment with Shamrock terminates.
17

18 16. If Shamrock's proposals, rates, customer lists, histories, commission
19 and bonus rates, and/or pricing and marketing strategies were disclosed to
20 Shamrock's competitors, it would have a severely disabling effect on Shamrock's
21 competitive position. Shamrock's ability to compete fairly for any contracts with
22 any customers and prospective customers would be severely compromised.
23 Instead, Shamrock's competitors would have an unfair competitive advantage over
24 Shamrock by virtue of their unfair and improper access to Shamrock's confidential
25
26
27
28

1 and proprietary information, including Shamrock's proposals, rates and strategies.
2
3

4 17. In addition, Shamrock would be severely hampered in its ability to
5 attract and retain qualified and capable sales representatives and other employees,
6 due to the unfair advantage gained by its competitors.
7

8 18. If Shamrock's confidential and proprietary information were disclosed
9 to its competitors, it would be devastating to Shamrock's business.
10

11 Jeff Gast and Sysco
12

13 19. On or about September 2000, Gast returned to Shamrock as a sales
14 manager. On December 7, 2004, Gast signed a Confidentiality Agreement ("the
15 Agreement") from Shamrock in which he agreed not to use or disclose "any trade
16 secrets, confidential information, knowledge or data relating or belonging to"
17 Shamrock. *See Ex. A ¶ 2*, attached hereto.
18

19 20. The Agreement defines Confidential and Proprietary Information as
20 "information, knowledge, or data concerning costs, commission reports or
21 payments, purchasing, profits, markets, sales, discounts, margins, customer
22 histories or preferences, relationships with vendors, organization structures,
23 employees, customers, surveys, customer lists, lists of prospective customers,
24 customer account records, marketing plans or efforts, sales records, training and
25 service materials, Company manuals and policies, computer programs, software
26 and disks, order guides, financial statements and projections, business plans,
27
28

1
2 budgets, supplier lists, contracts, calendars and/or daytimers that contain customer
3 contact information, compensation schedules, proposals and quotes for business,
4 notes regarding customers and pricing information.” *See Ex. A ¶ 2.*

5
6 21. Under the terms of the Agreement, Gast agreed not to contest either
7 the status of the information and materials as Confidential and Proprietary
8 Information or Shamrock’s ownership rights in the Confidential and Proprietary
9 Information. *See Ex. A ¶ 2.*

10
11 22. The Agreement also required that upon the cessation of his
12 employment, Gast was to immediately surrender to Shamrock “all computers,
13 telephones, computer software, records and other documents and materials,
14 including but not limited to, any and all business, customer and personnel
15 information or files, daytimers or other calendars containing contact or other
16 information relating to the Company’s customers, commission statements
17 containing information relating to the Company’s customers, and any and all
18 Confidential and Proprietary Information,” and any copies thereof. *See Ex. A ¶ 3.*

19
20 23. The Agreement also prohibited Gast for a period including 24 months
21 after his separation of employment from directly or indirectly recruiting employees
22 of Shamrock, or inducing any employee of Shamrock to terminate his or her
23 employment with Shamrock. *See Ex. A ¶ 4.*

24. Gast specifically acknowledged in the Agreement that a breach would
25. cause Shamrock “immediate and irreparable harm,” and agreed that an injunction
26. would be a permissible remedy. See Ex. A ¶ 5.

27. 25. From January 2005 to December 2007, Gast was employed by
28. Shamrock to work full-time as the Regional Sales Manager for the Northern
29. Region of Arizona, with additional responsibility over a portion of the Central
10. Region.

11. 26. In and around November 2007, Gast requested that he be considered
12. for the position of Regional Sales Manager for the Southern Region of Arizona.
13. Gast and Shamrock began negotiating his relocation to Tucson to become the
14. Regional Sales Manager of Southern Arizona for Shamrock.

15. 27. On or about November 8, 2007, Gast requested and received another
16. copy of his Agreement from one of Shamrock’s District Sales Managers.

17. 28. Gast and Shamrock agreed on his new position, and on December 20,
18. 2007, Shamrock announced Gast’s appointment to Regional Sales Manager of
19. Southern Arizona, effective immediately.

20. 29. As part of his new position, Shamrock agreed to pay Gast \$85,000.00
21. to help with the selling of his house and his relocation to Tucson, as well as
22. providing an additional loan amount of up to \$45,000.00 for other relocation
23. expenses, all provided he actually relocate to Tucson on behalf of Shamrock.

1
2 30. On December 21, 2007, Shamrock provided the \$85,000.00 payment
3 to Gast.
4

5 31. Upon information and belief, prior to or around this time, Gast began
6 negotiations with Sysco regarding his coming to work for Sysco.
7

8 32. On or about Friday, January 4, 2008, Gast emailed to his personal e-
9 mail account at jag64@cox.net numerous documents containing Shamrock's
10 confidential and proprietary information. These documents included, but were not
11 limited to, the "Top 100 Customer reports," the "label reports," the "per stop"
12 reports, the "Kahuna" reports, the bonus templates, and the proposal and bid
13 matrixes.
14

15 33. The documents Gast emailed to his personal account at
16 jag64@cox.net include, among other things, pricing, sales and volume information,
17 as well as profit margins and gross profits, all of which is highly sensitive,
18 confidential and proprietary to Shamrock, and would be very damaging in the
19 hands of a competitor.
20

21 34. Each of the foregoing documents and reports emailed by Gast to his
22 personal email account at jag64@cox.net is encompassed within the definition in
23 the Agreement of "Confidential and Proprietary Information."
24

25 35. Gast did not have authorization from Shamrock to email these
26 confidential and proprietary documents to his personal email account, and did not
27
28

1
2 ask for or receive permission to do so.
3

4 36. On or about Monday, January 7, 2008, Gast again emailed to his
5 personal email account at jag64@cox.net additional confidential and proprietary
6 information, including Lost Business Reports, Sales History documents, and Team
7 Statements from the Northern, Central and Southern regions of Arizona, spanning
8 the previous three years from 2004 - 2007.
9

10 37. Each of the foregoing documents and reports emailed by Gast to his
11 personal email account at jag64@cox.net is encompassed within the definition in
12 the Agreement of "Confidential and Proprietary Information."
13

14 38. Gast did not have authorization to email these confidential and
15 proprietary documents from Shamrock to his personal email account, and did not
16 ask for or receive permission to do so.
17

18 39. On or about January 8, 2008, Shamrock loaned Gast the additional
19 \$45,000.00 contemplated by the relocation agreement.
20

21 40. On or about January 9, 2008, Gast informed Randy McClanahan,
22 Shamrock's General Sales Manager for Arizona Foods, that he was considering
23 leaving Shamrock.
24

25 41. On or about January 12, 2008, Gast informed Larry Yancy,
26 Shamrock's Senior Vice President, that he was considering going to work for a
27 competitor of Shamrock's.
28

1
2 42. On or about January 14, 2008, Gast met again with Randy
3
4 McClanahan, and disclosed that he was going to go to work with Sysco.

5 43. Later that day, Gast met with Dan Carroll, Shamrock's General
6 Manager for Arizona Foods, and stated that Sysco had given him "a significantly
7 better offer," and that he was going to accept employment with Sysco.

8 44. On or about January 15, 2008, Gast submitted his written resignation
9 from Shamrock.

10 45. Gast's last day of employment with Shamrock was January 15, 2008.

11 46. On January 15, 2008, after he resigned from Shamrock, Randy
12
13 McClanahan met Gast and retrieved the laptop computer that Shamrock had made
14 available to Gast for use on behalf of Shamrock, his cell phone and Blackberry,
15
16 some customer files, and his keys.

17 47. Gast represented to McClanahan that this was all the materials,
18
19 documents and items he had of Shamrock's.

20 48. Consistent with the relocation agreement, Gast repaid the \$130,000.00
21
22 he had received from Shamrock, representing to McClanahan that Sysco had given
23
24 him the funds to cover the payment to Shamrock.

25 49. After Gast left Shamrock's employ on January 15, 2008, Shamrock
26
27 retained a computer forensic company, Alvarez and Marsal ("A&M") of Dallas,
28 Texas, to perform a forensic analysis of Gast's laptop at a cost exceeding

1
2 \$5,000.00.
3

4 50. Upon information and belief, Gast accessed and printed confidential
5 and proprietary data of Shamrock in anticipation of going to work for Sysco and
6 after he left Shamrock's employ. Upon information and belief, Gast's actions were
7 in furtherance of his intention to begin employment with Sysco and in furtherance
8 of Sysco's interests, and at the expense of Shamrock's interests. Upon information
9 and belief, at the time Sysco was communicating with Gast and inducing him to
10 assist Sysco in winning customers away from Shamrock and in obtaining a
11 competitive advantage over Shamrock, Gast was Shamrock's Regional Sales
12 Manager, and was being paid a substantial salary by Shamrock.
13

14 51. Upon information and belief, while he was accessing and copying
15 Shamrock's confidential and proprietary data without Shamrock's consent, Gast
16 was at all times acting as an employee or agent of Sysco.
17

18 52. Upon information and belief, in his position and on behalf of Sysco,
19 Gast has utilized the wrongfully retained Confidential and Proprietary Information
20 of Shamrock, as well as disclosed it to Sysco and/or its employees and agents for
21 use in gaining a competitive advantage over Shamrock. Among other things, Gast
22 provided to Sysco information about Shamrock's rates, customer lists, sales
23 histories, commission data, profit margins and pricing strategies.
24

1
2 53. Upon information and belief, Gast and/or Sysco has shared the
3 Confidential and Proprietary Information with current and potential customers of
4 Shamrock, all to Shamrock's detriment.
5
6

7 54. Upon information and belief, the fact that Sysco was soliciting
8 confidential and proprietary information and Shamrock's rates and pricing strategy
9 from Gast while he was employed by Shamrock was known by Sysco's
10 management.
11

12 55. Upon information and belief, on or about January 18, 2008, Gast
13 began employment with Sysco.
14

15 56. Upon information and belief, in violation of the Agreement, during
16 and after his employment at Shamrock, Gast has contacted Shamrock employees
17 for the purposes of recruiting them to come to work for Sysco.
18

19 57. Upon information and belief, in violation of the Agreement, Gast
20 recruited Shamrock employee Tim Teague to work for Sysco. Teague resigned
21 from Shamrock on or about January 16, 2008, and on information and belief,
22 Teague began working for Sysco as a sales representative shortly thereafter.
23

24 58. The exact scope and extent of Sysco's and Gast's unauthorized access
25 to Shamrock's trade secrets and confidential and proprietary information is not
26 presently known. However, upon information and belief, Sysco and Gast gained
27 improper access to and have copied, used and/or retained over 110 different trade
28

1
2 secrets and confidential and proprietary documents, including: Top 100
3
4 Customers Reports by gross profit and sales dollars, Monthly Shamrock Label
5 Commission Sales, the Southern Region Gross Profit Per Stop Reports, Proposal
6 and Bid Matrixes, Lost Business Reports, Sales History Reports from 2004 - 2007,
7 and Team Statements from 2004-2007.
8

9 59. Sysco's and Gast's unauthorized and improper access to Shamrock's
10 trade secrets and other confidential and proprietary information continues and is
11 ongoing.
12

13 60. On January 23, 2008, counsel for Shamrock notified Gast and Sysco
14 that Shamrock's belief that Gast was in violation of the Agreement, and that Sysco
15 had allowed and encouraged Gast to violate the Agreement. Counsel for Shamrock
16 demanded that all wrongful activities cease immediately and requested immediate
17 written detail of all wrongful activity to date and assurances that it will not
18 continue.
19

21 61. On January 25, 2008, counsel for Sysco and Gast denied any violation
22 of the Agreement, but failed to provide the requested detail or assurances of
23 compliance with the Agreement.
24

25 62. On February 1, 2008, counsel for Shamrock sent another letter to
26 Sysco and Gast's counsel and again delineated additional evidence Shamrock had
27 uncovered of Gast and Sysco's wrongful actions and violations of the Agreement.
28

1
2 At that time, counsel for Shamrock notified Gast and Sysco of its intent to pursue a
3 legal action to protect its rights.
4

5 COUNT ONE

6 *(Against Gast for Breach of Duty of Loyalty)*

7
8 63. Shamrock adopts and incorporates by reference the allegations in
9 paragraphs 1 through 62 as if fully set forth herein.

10
11 64. By virtue of his employment with Shamrock, and under the
12 Agreement, Gast owed Shamrock a fiduciary duty of loyalty.

13
14 65. By his actions averred above including, but not limited to, his
15 improper access and electronic transmission of over 110 confidential and
16 proprietary information from Shamrock's secure computer network to his personal
17 e-mail account with the intent to use the information to his personal benefit and
18 Sysco's competitive advantage, Gast breached his duty of loyalty to Shamrock.

19
20 66. In addition, by directly or indirectly recruiting Shamrock employees
21 to leave Shamrock's employment and work at Sysco, Gast breached his duty of
22 loyalty to Shamrock.

23
24 67. As a direct and proximate result of Gast's actions, Shamrock has
25 suffered and continues to suffer substantial and irreparable damages, including lost
26 profits, loss of goodwill, and considerable expense for various management
27 employees, outside counsel and forensic consultants in pursuing its legal rights in
28

1
2 this action. In addition, as a result of Gast's breach, Shamrock lost a valuable
3 employee and suffered monetary damages and costs in replacing such employee
4 and could lose opportunities to compete fairly for other business.
5

6 COUNT TWO
7

8 *(Against Sysco and Gast for Misappropriation of Trade Secrets)*

9 68. Shamrock adopts and incorporates by reference the allegations in
10 paragraphs 1 through 67 as if fully set forth herein.
11

12 69. By their actions described above, Sysco and Gast have
13 misappropriated information belonging to Shamrock that constitutes trade secrets
14 both under the common law and within the meaning of Ariz. Rev. Stat. § 44-401 *et*
15 *seq.* (2007).
16

17 70. Sysco and Gast used improper means to gain access to Shamrock's
18 trade secrets when Gast, without Shamrock's express or implied consent,
19 electronically transmitted 110 confidential and proprietary documents containing
20 Shamrock's trade secrets for purposes other than to serve Shamrock's interests,
21 disclosed such trade secrets to Sysco, and impermissibly retained and used the
22 trade secrets after Gast's resignation.
23

25 71. Copying, disclosing and using such information by Sysco and Gast
26 constitutes unauthorized copying, disclosure and/or use of trade secrets and
27 confidential information in violation of the common law and in violation of Ariz.
28

1
2 Rev. Stat. §44-401 *et seq.* (2007).
3

4 72. As a result of Sysco's and Gast's conduct, Shamrock has suffered and
5 will continue to suffer substantial and irreparable harm, including lost profits, loss
6 of goodwill, damage to the integrity of its confidential and proprietary information,
7 and considerable expense for various management employees, outside counsel and
8 forensic consultants in pursuing its legal rights in this action. In addition, because
9 Sysco has been unjustly enriched and may continue to be unjustly enriched by
10 virtue of Sysco's misappropriation of Shamrock's trade secrets, Shamrock is
11 entitled to recover from Sysco all profits that Sysco has earned and may continue
12 to earn as a result of its misappropriation, as well as injunctive relief and attorneys'
13 fees.
14

15 COUNT THREE
16

17 (Against Sysco and Gast for Conversion)
18

19 73. Shamrock adopts and incorporates by reference the allegations in
20 paragraphs 1 through 72 as if fully set forth herein.
21

22 74. Sysco and Gast have converted property belonging to Shamrock
23 without legal justification or privilege, including Shamrock's Confidential and
24 Proprietary Information, with the intent to benefit Sysco and Gast.
25

26 75. As a result of Sysco's and Gast's conduct, Shamrock has suffered and
27 will continue to suffer substantial and irreparable harm, including lost profits, loss
28

1
2 of goodwill, damage to the integrity of its confidential and proprietary
3 information, and considerable expense for various management employees, outside
4 counsel and forensic consultants in pursuing its legal rights in this action.
5
6

COUNT FOUR

8 *(Against Gast for Breach of Confidentiality Agreement)*

9 76. Shamrock adopts and incorporates by reference the allegations in
10 paragraphs 1 through 75 as if fully set forth herein.
11

12 77. As described above, Gast entered into a valid and enforceable
13 Agreement with Shamrock on December 7, 2004. *See* Ex. A.
14

15 78. By virtue of the foregoing conduct, Gast has violated the terms of the
16 Agreement as follows:
17

- 18 a) By breaching the duty of loyalty;
- 19 b) By breaching the duty of confidentiality;
- 20 c) By failing to return and surrender all Shamrock property and
information; and
- 21 d) By soliciting and recruiting Shamrock employees to terminate
22 their employment with Shamrock.

23 79. Gast's numerous breaches of the Agreement have harmed and
24 threaten to further harm Shamrock's legitimate business interests, including,
25 without limitation, its interest in protecting its confidential and proprietary
26
27
28

information, its interest in preserving its relationships and goodwill with customers and prospects, and its interests in protecting its relationships with its employees.

80. As a result of Gast's conduct, Shamrock has suffered and will continue to suffer substantial and irreparable harm, including lost profits, loss of goodwill and considerable expense for various management employees, outside counsel and forensic consultants in pursuing its legal rights in this action. In addition, Shamrock has lost one employee, and stands at risk of losing other employees, as well as customers, due to the wrongful conduct of Gast. Shamrock is entitled to its reasonable attorneys' fees pursuant to the Agreement and Ariz. Rev. Stat. § 12-341.01 (2007) incurred in bringing this action.

COUNT FIVE

(Against Gast and Sysco for Unjust Enrichment)

81. Shamrock adopts and incorporates by reference the allegations in paragraphs 1 through 80 as if fully set forth herein.

82. By virtue of the foregoing conduct, Gast and Sysco have been and will be unjustly enriched at the expense of Shamrock.

83. As a result of the foregoing conduct, Shamrock has suffered and will continue to suffer substantial and irreparable harm, including lost profits, loss of goodwill and damage to relationships with its customers, and considerable expense for various management employees, outside counsel and forensic consultants in

1
2 pursuing its legal rights in this action.
3

4 84. It would be inequitable for Sysco and/or Gast to retain the benefits
5 gained by their wrongful conduct without paying Shamrock the value of such
6 benefits.
7

8 COUNT SIX
9

10 *(Against Sysco for Tortious Interference with Contract)*
11

12 85. Shamrock adopts and incorporates by reference the allegations in
13 paragraphs 1 through 84 as if fully set forth herein.
14

15 86. Under the Agreement, Gast had a duty to inform any entity with
16 whom he interviewed or otherwise discussed employment opportunities of the
17 terms of the Agreement and its restrictions on his post-Shamrock employment
18 activities.
19

20 87. Upon information and belief, Sysco knew or should have known of
21 Gast's duty of loyalty, duty of confidentiality, obligation to return Shamrock's
22 materials and documents upon his termination, and duty not to solicit Shamrock
23 employees.
24

25 88. Upon information and belief, Sysco interfered with the Agreement
26 between Shamrock and Gast, and the contractual obligations and duties that Gast
27 owed to Shamrock despite Sysco's knowledge of the Agreement.
28

89. Sysco's interference was intentional, malicious and without legal

1
2 justification, and was conducted by improper means and for an improper purpose.
3

4 90. As a result of Sysco's conduct, Shamrock has suffered and will
5 continue to suffer substantial and irreparable harm, and damages including lost
6 profits, lost business opportunities, loss of goodwill, and considerable expense for
7 various management employees, outside counsel and forensic consultants in
8 pursuing its legal rights in this action.
9

10 COUNT SEVEN
11

12 *(Against Sysco and Gast for Tortious Interference with Contract and
13 Prospective Business Relations)*
14

15 91. Shamrock adopts and incorporates by reference the allegations in
16 paragraphs 1 through 90 as if fully set forth herein.
17

18 92. Sysco and Gast knew or should have known that Shamrock had
19 existing contracts and advantageous business relations with a number of customers
20 and prospective customers.
21

22 93. Upon information and belief, Sysco and Gast have interfered with
23 Shamrock's contracts and advantageous business relations with Shamrock's
24 customers and prospects. Such interference was intentional, malicious and without
25 legal justification, and was conducted by improper means and for an improper
26 purpose.
27

28 94. As a result of Sysco's and Gast's conduct, Shamrock has suffered and
29

1
2 will continue to suffer serious and irreparable harm, damages including lost profits,
3
4 loss of goodwill and lost opportunities to compete fairly for prospective business.

5 In addition, Shamrock has incurred significant expense for various management
6 employees, outside counsel and forensic consultants as a result of Sysco's and
7
8 Gast's actions in pursuing its legal rights in this action.

9 COUNT EIGHT

10 *(Against Gast for Violation of the Computer Fraud and Abuse Act,*

11
12 *18 U.S.C. § 1030(a)(2))*

13 95. Shamrock adopts and incorporates by reference the allegations in
14 paragraphs 1 through 94 as if fully set forth herein.
15

16 96. On or about January 4, 2008 and January 7, 2008, Gast intentionally
17 accessed a protected computer without authorization or exceeded his authorized
18 access.
19

20 97. Through the unauthorized access to his protected computer, Gast
21 obtained Shamrock's confidential and proprietary information from the protected
22 computer.
23

24 98. In furtherance of his unauthorized access to his protected computer,
25 Gast electronically transmitted Shamrock's confidential and proprietary
26 information over the Internet to his personal, unprotected e-mail account without
27 reason.
28

99. Gast's conduct and computer transmissions involved an interstate communication.

100. As a direct and proximate result of Gast's actions, Shamrock has suffered and will continue to suffer substantial and irreparable harm, and is entitled to compensatory damages and injunctive relief or other equitable relief, for its lost profits, lost goodwill and the time and resources spent and cost of hiring an expert to research and assess the unauthorized information and assets, transmitted from Shamrock's protected computer, all of which amount to a loss during a one year period of at least \$5,000.00.

COUNT NINE

(Against Gast for Violation of the Computer Fraud and Abuse Act,

18 U.S.C. § 1030(a)(4))

101. Shamrock adopts and incorporates by reference the allegations in paragraphs 1 through 100 as if fully set forth herein.

102. On or about January 4, 2008 and January 7, 2008, Gast knowingly and with intent to defraud accessed a protected computer without authorization or exceeded his authorized access.

103. Through the unauthorized access to his protected computer, Gast
furthered the intended fraud and obtained value of more than \$5,000.00, including
Shamrock's confidential and proprietary information from the protected computer.

104. As a direct and proximate result of Gast's actions, Shamrock has suffered and will continue to suffer substantial and irreparable harm, and is entitled to compensatory damages and injunctive relief or other equitable relief, for its lost profits, lost goodwill and the time and resources spent and cost of hiring an expert to research and assess the unauthorized information and assets, transmitted from Shamrock's protected computer, all of which amount to a loss during a one year period of at least \$5,000.00.

COUNT TEN

(Against Gast for Violation of the Computer Fraud and Abuse Act)

18 U.S.C. § 1030(a)(5)(iii))

105. Shamrock adopts and incorporates by reference the allegations in paragraphs 1 through 104 as if fully set forth herein.

106. On or about January 4, 2008 and January 7, 2008, Gast intentionally accessed a protected computer without authorization.

107. Upon information and belief, through the unauthorized access to his protected computer, Gast caused damage to Shamrock by accessing, retaining and deleting data and information from Shamrock's protected computer, and by disclosing the data and information to Sysco.

108. As a direct and proximate result of Gast's actions, Shamrock has suffered and will continue to suffer substantial and irreparable harm, and is entitled

1
2 to compensatory damages and injunctive relief or other equitable relief, for its lost
3 profits, lost goodwill and the time and resources spent and cost of hiring an expert
4 to research and assess the unauthorized information and assets, transmitted from
5 Shamrock's protected computer, all of which amount to a loss during a one year
6 period of at least \$5,000.00.
7
8

9 COUNT ELEVEN

10 *(Against Sysco and Gast for Constructive Trust)*
11

12 109. Shamrock adopts and incorporates by reference the allegations in
13 paragraphs 1 through 108 as if fully set forth herein.
14

15 110. By their conduct as described above, Gast and Sysco have
16 misappropriated valuable corporate opportunities belonging to Shamrock. Unless
17 they are prevented from doing so, Gast and Sysco will continue to enjoy and be
18 unjustly enriched by the unlawful diversion of such corporate opportunities.
19

20 111. Any and all funds, accounts, revenues and receivables of Gast and
21 Sysco, whether in existence or after acquired, obtained in whole or part as a result
22 of any information provided by Gast, and any assets acquired with such monies,
23 will have been acquired through wrongful conduct and contrary to equitable
24 principles. All title and right to such funds, accounts, revenues, receivables and
25 related assets properly belong to Shamrock, since they were derived by Gast and
26 Sysco from their misappropriation of Shamrock's corporate opportunities and
27
28

1
2 confidential information and/or interference with Shamrock's prospective business
3
4 relations.

5 **COUNT TWELVE**
6

7 *(Against Sysco and Gast for Unfair Competition)*
8

9 112. Shamrock adopts and incorporates by reference the allegations in
10 paragraphs 1 through 111 as if fully set forth herein.
11

12 113. Sysco and/or Gast acquired by improper or unauthorized means what
13 they knew or should have known was Shamrock's confidential and proprietary
14 information and trade secrets.

15 114. Upon information and belief, Sysco and/or Gast have used and will
16 continue to use the confidential and proprietary information and trade secrets of
17 Shamrock in direct competition with Shamrock.
18

19 115. Sysco's and Gast's use of the confidential and proprietary information
20 and trade secrets of Shamrock occurred and will continue to occur despite Sysco's
21 and Gast's knowledge that such information is confidential and was acquired
22 through improper means, and in violation of the terms of the Agreement.
23

24 116. As a result of the foregoing actions of Sysco and Gast, Shamrock has
25 suffered and will continue to suffer damages.
26

27 **PRAAYER FOR RELIEF**
28

WHEREFORE, Plaintiff, Shamrock respectfully requests the following

1
2 interlocutory and final relief:

3
4 (a) an order temporarily, preliminarily and permanently enjoining Sysco
5 and Gast from using, copying, disseminating, retaining, disclosing or providing
6 access to any information, documents, pricing or financial information or other
7 confidential files, data or materials that Sysco and/or Gast obtained without
8 Shamrock's authorization or consent and requiring the return to Shamrock of all
9 misappropriated trade secrets and Confidential and Proprietary Information;

10
11 (b) an order temporarily, preliminarily and permanently enjoining Gast
12 from, directly or indirectly, recruiting for employment or inducing to terminate his
13 or her employment with Shamrock any person who currently employed by
14 Shamrock for a period of twenty-four (24) months;

15
16 (c) an order imposing a constructive trust, for the benefit of Shamrock, on
17 all proceeds paid to or on behalf of Sysco and/or Gast arising out of their
18 misappropriation of Shamrock's trade secrets and Confidential and Proprietary
19 Information;

20
21 (d) an order appointing an accountant or special master to account for all
22 proceeds and expenses or revenues that Sysco received or receives by virtue of its
23 misappropriation of Shamrock's trade secrets and Confidential and Proprietary
24 Information or interference with Shamrock's contracts or prospective business
25 relations, and compelling payment to Shamrock of all such profits that Sysco has
26 received or receives;

1
2 (e) an award to Shamrock of compensatory and statutory damages,
3 including lost profits, lost goodwill, and interference with employees and
4 customers;

5 (f) an award to Shamrock of punitive damages;

6 (g) an award to Shamrock of its costs and expenses, including costs of
7 hiring an expert to research and assess the unauthorized information and assets
8 transmitted from Shamrock's protected computer and reasonable attorney's fees
9 under the Agreement and Ariz. Rev. Stat. § 12-341.01 (2007) incurred in bringing
10 this action;

11 (h) an order and judgment awarding to Shamrock all other relief to which
12 it is entitled in law or equity.

13
14 DATED this 3rd day of February, 2008
15
16

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19
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VERIFICATION

I, Dan Carroll, verify and declare under 28 U.S.C. §1746 that:

1. I am the General Manager of Arizona Foods at Shamrock Foods Company.
2. I have read the foregoing Verified Complaint and it is, based on my personal knowledge, true.

I verify and declare under penalty of perjury that the foregoing statements are true and correct.

Dan Carroll

Dan Carroll

Dated: February 1, 2008